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10/655,969	09/04/2003	Jay S. Walker	3718582-00085	8907
29159	7590	02/03/2010	EXAMINER	
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			SAGER, MARK ALAN	
			ART UNIT	PAPER NUMBER
			3714	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/655,969	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> M. Sager	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-61 is/are pending in the application.
- 4a) Of the above claim(s) 10-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-43, 47-48, 51-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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***Election/Restrictions***

1. This application contains claims 10-41 drawn to an invention nonelected without traverse (implicit) in the reply filed on May 30, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.02.

***Claim Interpretation***

2. Per MPEP 2111.04, claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are (A) "adapted to" or "adapted for" clauses, (B) "wherein" clauses, and (C) "whereby" clauses. The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a "whereby" clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." *Id.* However, the court noted (quoting *Minton v. Nat 'l Ass 'n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a "whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited." *Id.* In this case, the 'wherein' clause of claims 51-61 merely states its environment of use, intended result or the clause fails to state a condition material to its patentability as in evidence below.

***Claim Rejections - 35 USC § 102***

3. Claims 42-43, 47, 51 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Wynn (5971271). This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Wynn discloses a computer readable medium encoded with instructions to perform a concierge service system (abstract, 2:10-3:29, 5:7-11:64, figs 1-20A) teaching to determine a player engaged in gaming activities at a gaming device would like to communicate with another (abstract, 2:10-3:29, 5:7-11:64, figs 1-20A) having access to a portable communication device (abstract, 2:10-3:29, 5:7-28, figs 1-20A, ref 16), monitor gaming activities of a player at a gaming device (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A), obtain a player identifier of a name, address a tracking card or hotel room number when player is a guest (abstract, 2:10-3:29, 4:45-59, 5:7-6:45, 7:28-9:33, 9:63-64, 11:1-64, figs 1-20A), determine an individual who will communicate with player (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A, concierge) and enable communication between player and individual via the portable communication device (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A), determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A), enabling the individual to provide a service to the player (abstract, 2:10-3:29, 5:7-6:45, 7:28-9:33, 11:1-64, figs 1-20A).

***Claim Rejections - 35 USC § 103***

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 42-43, 47-48 and 51-61 are rejected under U.S.C. 103(a) as unpatentable over Walker (6139431) in view of Wynn (5971271). This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Walker discloses a gaming device and method teaching claimed steps/features including an apparatus having a processor and a memory that stores a program and a computer readable medium (abstract, 2:23-50, figs 1-7), determine a player engaged in gaming activities at a gaming device would like to communicate with another (abstract, 2:5-20 and 23-50, 3:21-5:14, 7:31-8:25, 10:61-65, figs 1-7) having access to a portable communication device as tethered phone/receiver connected to phone jack (abstract, 2:5-20 and 23-50, 3:21-5:14, ref 109, i.e. phone is portable per tether/cord as similarly stated above incorporated herein), monitor gaming activities of a player at a gaming device (fig 1-7, ref 119, i.e. player tracking), obtain a player identifier (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, ref 119, 121), determine an individual who will communicate with player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, 10:61-65, figs 1-7, individual at phone number dialed including concierge of admitted prior art or at cited entertainment/chat service) and enable communication between player and individual via the portable communication device (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, fig 1-7), determin[ing], based on gaming activities, a prompt comprising an offer for product or service to be presented by the individual to the player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, figs 1-7, offer of entertainment or

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chat service upon connection thereto or concierge of admitted prior art offers to provide service request from player), enabling individual to provide a service to the player (abstract, 1:31-44, 2:23-50, 3:21-5:14, 7:31-8:25, figs 1-7, the party of entertainment/chat service provides service or concierge of admitted prior art provides service to order show ticket or make dinner/hotel reservations).

In the alternative, Walker discloses claimed process (supra) but lacks determine[ing], based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual [the Office disagrees, but where Walker is not clear, in the alternative, the process is obvious as in evidence herein]. The Office notes the equivalence of offer for product and offer of a service in that each is an offer and that the form of product or service is non-critical. In a related reference, Wynn discloses a computer readable medium encoded with instructions to perform a concierge service system (abstract, 2:10-3:31, 4:45-6:45, 7:28--11:64, figs 1-20A) teaching determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual such that player information obtained from player tracking system is displayed to prompt concierge and to offer service to aid player with their request such as transfer of funds or operation of a particular game/machine so that communication with a human who knows the identity, preferences and requests of a customer is instantly available (abstract, 2:10-3:31, 4:45-6:45, 7:28-9:33, 11:1-64, figs 1-20A). Wynn is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as

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demonstrated by the references. In consideration of US Supreme Court decision in KSR, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time prior to the invention to apply the process of determine, based on the gaming activities, a prompt comprising an offer for product or service to be presented by an individual to the player and transmit the prompt to the individual as taught by Wynn to improve the process of Walker for the predictable result of alerting concierge to player information so as to be better informed regarding the player and their preferences so as to provide better faster service with a personal touch thereby to ensure a more satisfied customer (Wynn: abstract, 2:10-45, 2:63-3:24, 5:10-28, 6:12-42, 7:28-8:55, 9:15-33, 11:1-64).

Regarding claim 48, as best understood, Walker includes altering the state of the gaming device based on an input received from the individual for casino operator change of parameters based on request by player at the gaming machine who request assistance via portable communication device as to how to effect a change such as locked machine or explain how to operate machine to provide player assistance in altering game device such as unlocking a jammed game device essentially by using phone [either of admitted concierge service or via phone connection device 109 to contact casino personnel] to request assistance at gaming machine. As further evidence under MPEP 2131.01 regarding player requesting assistance at gaming machine, see Raven 5429361 @ 8:15-39 to request drink, change (i.e. denomination change as in exchange dollars into equivalent coin value) or reservation of machine. This is akin to a help button but using the tethered phone 109 to request aid.

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Regarding identifiers, Walker disclose player card that identifies a player, thereby teaching the claimed process including an identifier as same structure performing same process for same purpose where identifiers of name, address, phone number, hotel room number, email address, payment identifier, credit card number and debit card number fail to critically distinguish as being equivalent identifiers in that each identifies player. Wynn provides further evidence of lack of criticality of identifiers as including player name, player address and hotel room number per guest status (6:6-11). Walker [in view of Wynn] discloses player identifier for player card but lack some of the particular identifiers. However, Walker '431 states player tracking device 119 is well known in the art @ 3:49-50. The associated information stored for player tracking to be used is thus similarly admitted as known by association/extension since a player registers by providing such identifiers in order to use player tracking. The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality based on teachings within Walker in view of Wynn. Because Wynn and Walker each pertain to use of player tracking, it would have been obvious to an artisan at a time prior to invention to substitute one identifier for another for the predictable result of identifying player of account. The particularly claimed identifier fails to patentably distinguish over player tracking card, player name, player address or hotel room number by Walker in view of Wynn for identifying player as same structure performing same process for same purpose.

6. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn in view of Walker (WO96/00950), and claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Wynn as applied to claim 43 above, and further in view of Walker (WO96/00950). This holding is maintained from prior action. Response to remarks is provided



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below and incorporated herein. Alternatively, as best understood, Wynn and Walker in view of Wynn each disclose claimed method (supra) but lack altering the state of the gaming device based on an input received from the individual includes casino operator change of parameters. In related references, Walker '950 discloses a system where a player using a dedicated gaming computer [a portable communication device] provided by wagering establishment (29:18-22, ref 14) may request a wagering authority 16 to resolve a dispute and alter the state of the gaming device based on input received from the individual at the wagering establishment and acceptance by the player (31:15-23). Walker '950 is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as demonstrated by the references. In consideration of US Supreme Court decision in *KSR*, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time prior to the invention to apply the process of altering the state of the gaming device based on an input received from the individual includes casino operator change of parameters as taught by Walker '950 to improve the process of Wynn or the process of Walker '431 in view of Wynn for the predictable result of resolving a dispute to player acceptance.

7. Claims 52-53, 55-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn in view of Walker '983. This holding is maintained from prior action. Response to remarks is provided below and incorporated herein. Wynn discloses steps of claimed invention (supra) including player identifier (abstract, 2:10-3:29, 4:45-59, 5:7-6:45, 7:28-9:33, esp. 4:45-

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59, 8:42-50) but lacks other identifiers claimed. Regarding identifiers, Wynn discloses a player card that identifies a player of player account that stores identifiers of player name, player address and status as guest that includes room number, thereby teaching the claimed process including an identifier as same structure performing same process for same purpose where identifiers of phone number, email address, payment identifier, credit card number and debit card number fail to critically distinguish as being equivalent identifiers in that each identifies player where an identifier is not structure but information to identify a user of an account and although Wynn lacks the particular identifiers, Wynn discloses an identifier and thus performs same function using same structure for same purpose. In the alternative, in a related reference, Walker '983 discloses a computer readable medium encoded with instructions for directing a processor to perform steps of method including obtaining a player identifier of player name, address, phone number, hotel room number, payment identifier, credit card number, financial account number, home billing address (ref. 4440-4448). Regarding email and debit card, Walker '983 states player identification information denotes any information or compilation of information that uniquely identifies a player (4:51-63, 5:52-65). The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality based on teachings within Wynn and Walker. Walker '983 is analogous art for either being in the field of applicant's endeavor or, being reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The level of ordinary skill in the art is as demonstrated by the references. In consideration of US Supreme Court decision in *KSR*, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if

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the variations are predictable to one of ordinary skill in the art', because Wynn and Walker each pertain to methods for identifying a player, it would have been obvious to an artisan at a time prior to the invention to substitute one method for the other to achieve the predictable result of identifying player. Regarding email and debit card, Walker '983 states player identification information denotes any information or compilation of information that uniquely identifies a player (4:51-63, 5:52-65). The Office notes the equivalence of the various forms of identifiers to identify a player and notes the lack of criticality of email and debit card number based on teachings within Wynn and Walker.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 42-43, 47-48 and 51-61 have been considered but they are not persuasive. The filed response asserts patentability of invention in remarks page 9-10 for Wynn failing to show enabl[ing] communication between the player and the individual via the portable communication device, the Office disagrees, is somewhat perplexed by assertion given use of tethered/corded phone has been in existence for over 100 years and is not well taken in light of Assignee admission since 1) Wynn is portable to degree tethered handset is portable in that the tether/cord that connects handset to phone jack permits a degree of portability thereby, and 2) the degree of portability is not defined in claim or in specification to preclude a corded line to define portability such as taught by Wynn and although claims are read in light of specification, features are not read into the claims from the specification. Also, the inventor failed to act as lexicographer in this case regarding 'portable' by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)

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(inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Since in this case, inventor failed to define the term with reasonable clarity, deliberateness, and precision so as to set out his uncommon definition within the originally filed disclosure so as to give an artisan notice of its change in meaning. As further evidence regarding degree of portability of a tethered handset under MPEP 2129 and/or 2131.01, see Assignee admitted prior art in 6139431 @ 1:56-66 refers to telephone being at gaming machine and further consideration regarding degree of portability 6003013 @ fig 13 and 6116597 @ figs 1-3 each show flexible, corded phone thereby permitting portability to extent of cord being flexibly extended. In summary then Assignee has admitted telephone use via jack at gaming machine was known prior to their invention; use of corded/tethered phone at gaming machine was known prior to critical date herein at least per either ‘013 or ‘597 if not implicit by aforementioned Assignee admission in ‘013 and further use of tether line for a public phone is consistent with pay phones (albeit metallic, but still flexible and portable to extent of cord length). Thus, the assertion that Wynn is not portable is perplexing since as would be interpreted by an artisan it contradicts the following statement that Wynn has a tethered handset which the evidence shows prevalence of phone use at public phone including at a gaming machine is via flexible extendable cord to permit player/user to wander (albeit, limited to its flexibly extended length) and an artisan would likewise interpret such corded/tethered extension within gaming machine of Wynn. To be clear, this is not an indication of altering holding to obviousness, but

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rather that Wynn includes a tethered handset that agreeably handset telephone is to keep player at gaming machine, but a tethered handset does not teach away from being portable when the degree of portability is not defined to preclude a length of [extendable] cord. Thus, when the art is considered as a whole at a time prior to the invention, and the scope of claim is considered for its breadth, the Office maintains Wynn teaches all claimed functions and features including enabl[ing] communication between the player and the individual via the portable communication device as broadly claimed as would be interpreted by an artisan at a time prior to the invention. Also, the remark on page 9 that Wynn teaches away from a portable device is not well taken and is contrary to statement on page 9 that Wynn is tethered : 'Indeed, the tethered handset described in Wynn' such that remark indicates Wynn is tethered and since a tethered handset is portable, it cannot teach away what is inherent. Thus, the totality of filed rebuttal evidence when taken as a whole it fails to outweigh anticipation by Wynn as would be interpreted by an artisan.

Further, although not relied upon, Wynn is also portable to extent that the gaming device with handset is portable, i.e. hand dolly, forklift or truck in that the claim only requires a portable communication device but does not define how or when to exhibit portability. In particular, Wynn's gaming machine with portable communication device is portable when gaming machine with handset is moved such as a fork lift, dolly or truck, in that it is not fixed.

The response alleges patentability of invention on page 10 that the holding failed to show every element of claims and failed to address factual inquiries under law. The Office disagrees since holding stated teachings of prior art as would be interpreted by an artisan, interpretation of claim scope, states level of ordinary skill being shown by the references, what is lacking from prior art and reason for combination in consideration of decision in KSR as in evidence above.

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The response alleges patentability of invention on page 10-11 due to combination of Walker in view of Wynn allegedly lacking enabl[ing] communication between the player and the individual via the portable communication device, the Office disagrees for same reasons stated above regarding tethered/corded telephone use, scope of portable not being defined to preclude portable tethered phone as taught by Walker or Wynn, failure of inventor to act as lexicographer and thus Office incorporates discussion above herein with emphasis of remark that Wynn is tethered as on page 9 'Indeed, the tethered handset described in Wynn' such that remark states Wynn is tethered. The remarks on page 11 notes issue with citations from Walker, the typos regarding citations have been corrected herein and Office notes Counsel did not request clarification regarding citations from reference such as via interview process. MPEP 713. Thus, the totality of filed rebuttal evidence to overcome obviousness when taken as a whole as would be interpreted by an artisan at time prior to invention it fails to outweigh obviousness of Walker in view of Wynn.

In reply to remark on page 12-13 that action provided no reason to combine or statement of the factual inquiries required under law, the Office disagrees since holding properly addressed requirements under law to provide evidence in record that supports denying inventor a patent for presently claimed invention.

Applicant relies upon dependency to independent claim 1 regarding its features for patentability of claim 48, the Office reiterates above discussion herein for claim 48.

Applicant relies upon dependency to independent claim 1 regarding its features for patentability of claim 52-53 and 55-61, the Office reiterates above discussion herein for claims 52-53 and 55-61.

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9. Applicant's arguments, see section II.A, pages 8-9, filed Nov 1, 2009, with respect to the rejection(s) of claim(s) under 112, second para. have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/  
Primary Examiner, Art Unit 3714